

**A RESOLUTION BY**

**CITY UTILITIES COMMITTEE**

**02- *R* -0587**

**A RESOLUTION TO AUTHORIZE PAYMENT OF STIPULATED PENALTIES IMPOSED BY THE ENVIRONMENTAL PROTECTION AGENCY (EPA) AND THE ENVIRONMENTAL PROTECTION DIVISION OF THE DEPARTMENT OF NATURAL RESOURCES OF THE STATE OF GEORGIA (EPD) IN THE AMOUNT OF SIX HUNDRED EIGHTY-FOUR THOUSAND EIGHT HUNDRED AND 00/100 DOLLARS (\$684,800.00) PURSUANT TO THE CONSENT DECREE, CIVIL ACTION FILE NO. 1:95-CV-2550-TWT AND FIRST AMENDED CONSENT DECREE, CIVIL ACTION FILE NO. 1:98-CV-1956-TWT; TO IDENTIFY THE SOURCE OF FUNDING; AND FOR OTHER PURPOSES.**

**WHEREAS**, on March 22, 2002 the Georgia Environmental Protection Division (EPD) and the United States Environmental Protection Agency (EPA) made a written demand on the City for stipulated penalties concerning violations of both the CSO Consent Decree (1:95-CV-2550-TWT) and the First Amended Consent Decree (1:98-CV-1956-TWT); and

**WHEREAS**, the City is subject to stipulated penalties for failure to report combined sewer overflows in the Quarterly Report (2001) and to provide disinfection performance data in violation of interim Operational Standards as required by the CSO Consent Decree; and

**WHEREAS**, under the First Amended Consent Decree the City is subject to stipulated penalties for sanitary sewer overflows (SSOs) to waters and dry land (3<sup>rd</sup> Quarter 2001 and 4<sup>th</sup> Quarter 2001); and

**WHEREAS**, the City is subject to stipulated penalties for untimely reporting of discharges to EPD within 24 hours orally and to EPD and EPA within 5 days in writing by certified mail as required by the Collection System Contingency and Emergency Response Plan and First Amended Consent Decree (3<sup>rd</sup> Quarter 2000; 4<sup>th</sup> Quarter 2000; 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Quarters 2001); and

**WHEREAS**, the City is also subject to stipulated penalties for failure to establish monitoring and report in the Short Term Collection and Transmission Operation Plan (July 1, 1999 to October 5, 2001) two small pump stations (one serving a single home and the other serving approximately a dozen residences) and for error in the Macro System Evaluation Report (August 1, 2001 to January 24, 2002); and

**WHEREAS**, the total amount assessed and demanded by EPD and EPA for these violations is Six Hundred Eighty-Four Thousand Eight Hundred and 00/100 (\$684,800.00) as set out in Exhibit "A" hereto; and

**WHEREAS**, on December 20, 2001 the Georgia Environmental Protection Division (EPD) and the United States Environmental Protection Agency (EPA) made a written demand that Section XI.L of the First Amended Consent Decree be enforced requiring payment of interest on any future late payment of stipulated penalties and specified that interest on late payment of \$270,500 for spills in the 2<sup>nd</sup> Quarter of 2001 (due October 29, 2001 and transmitted November 16, 2001) be included with any future payment of stipulated penalties; and

**WHEREAS**, the CSO Consent Decree, Section XI. O. similarly provides for payment of interest on late payment of stipulated penalties; and

**WHEREAS**, the Department of Public Works of the City does not dispute the fact that these violations did occur; and

**WHEREAS**, the payment to EPD and EPA of this assessment by the City does not constitute a finding or adjudication, is not to be evidence of a violation of state or federal laws by the City, nor does the City by its consent agree to any violations of state or federal laws or admit any liability to any third party or parties; and

**WHEREAS**, funds for this purpose are available in account number 2J01-529017-M51001; and

**WHEREAS**, it is deemed to be in the interest of the City to accept the proposed stipulated penalties and to pay the incident assessments to them.

**NOW, THEREFORE, BE AND IT IS RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA as follows:**

**Section One:** That the Chief Financial Officer of the City is authorized to issue checks in the amounts of Three Hundred Forty-Two Thousand Four Hundred and 00/100 (\$342,400.00) payable to the **State of Georgia** and Three Hundred Forty-Two Thousand Four Hundred (\$342,400.00) payable to the **Treasurer, United States of America** as stipulated penalties imposed pursuant to the Consent Decree and First Amended Consent Decree at the discretion of the Environmental Protection Agency and the Environmental Protection Division of the Department of Natural Resources of the State of Georgia; and

**Section Two:** That the Chief Financial Officer is authorized to pay interest due on the said stipulated penalties in accordance with the Consent Decree and First Amended Consent Decree; and

**Section Three:** That the said payments be chargeable to Account Number 2J01 529017 M51001.

## Exhibit A

Summary of Penalty Demand

<b>First Amended Consent Decree Violations</b>	<b>Amount</b>
3 <sup>rd</sup> Quarter 2000 SSO Reporting	\$32,000
4 <sup>th</sup> Quarter 2000 SSO Reporting	\$8,000
1 <sup>st</sup> Quarter 2001 SSO Reporting	\$58,000
2 <sup>nd</sup> Quarter 2001 SSO Reporting	\$102,000
3 <sup>rd</sup> Quarter 2001 SSO Reporting	\$76,000
4 <sup>th</sup> Quarter 2001 SSO Reporting	\$12,000
3 <sup>rd</sup> Quarter 2001 SSOs	\$128,500
4 <sup>th</sup> Quarter 2001 SSOs	\$92,500
3 <sup>rd</sup> Quarter 2001 Quarterly Reporting	\$26,000
4 <sup>th</sup> Quarter 2001 Quarterly Reporting	\$8,000
Unreported Pump Stations	\$45,300
Macro System Reporting	\$42,500
<b>Consent Decree Violations</b>	<b>Amount</b>
CSO Reporting	\$24,000
CSO Operational Standards Reporting	\$30,000
<b>TOTAL DEMAND</b>	<b>\$684,800</b>

## TRANSMITTAL FORM FOR LEGISLATION

**TO: MAYOR'S OFFICE**

**ATTN: Greg Pridgeon**

Originating Department: Public Works

Contact (name): Ben Taube x 5232

Commissioner's Signature: \_\_\_\_\_

Director's Signature \_\_\_\_\_

Committee(s) Purview: City Utilities Committee

Committee Deadline:

Committee(s) Meeting Date: 3/26/02

City Council Meeting Date:

### **CAPTION:**

A Resolution to authorize payment of stipulated penalties imposed by the Environmental Protection Agency (EPA) and the Environmental Protection Division of the Department of Natural Resources of the State of Georgia (EPD) in the amount of six hundred eighty-four thousand eight hundred and 00/100 dollars (\$684,800.00) pursuant to the Consent Decree, Civil Action File No. 1:95-CV-2550-TWT and First Amended Consent Decree, Civil Action File No. 1:98-CV-1956-TWT; to identify the source of funding; and for other purposes.

### **BACKGROUND/PURPOSE/DISCUSSION:**

On March 22, 2002 the Georgia Environmental Protection Division (EPD) and the United States Environmental Protection Agency (EPA) made a written demand on the City for stipulated penalties concerning violations of both the CSO Consent Decree (1:95-CV-2550-TWT) and the First Amended Consent Decree (1:98-CV-1956-TWT).

### **FINANCIAL IMPACT (if any):**

#### **Mayor's Staff Only**

Received by Mayor's Office: \_\_\_\_\_

(date)

Reviewed by: \_\_\_\_\_

(initials)

(date)

Submitted to Council: \_\_\_\_\_

(date)

Action by Committee: Approved \_\_\_\_\_ Adverse \_\_\_\_\_ Held \_\_\_\_\_ Amended \_\_\_\_\_

Action by Committee: Substitute \_\_\_\_\_ Referred \_\_\_\_\_ Other \_\_\_\_\_

# MEMORANDUM



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## ATLANTA WASTEWATER SYSTEM IMPROVEMENT PROGRAM PROGRAM MANAGEMENT TEAM

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**To:** File  
**From:** Joe Basista, Program Manager  
**Subject:** EPA/EPD Letter -- Assessment of Stipulated Penalties

**Date:** 3/25/02  
**Reference:** AWSIP Contract

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Correspondence from EPA/EPD to the City dated 3/22/02 assesses stipulated penalties in accordance with the Consent Decrees, through 12/31/01, in the total amount of \$692,800. The stipulated penalties are primarily associated with violations of the Maintenance, Operation and Management Systems (MOMS) plans for the wastewater collection system, with some exceptions.

The stipulated penalties are significant, however evidence identified herein suggests that the City has turned the corner on previous performance, with some performance improvements already in place and significant improvements scheduled for Year 2002 and beyond:

- The attached spreadsheet summarizes the calculations used by EPA to assess the stipulated penalties. In all cases, the calculated penalty is less than the maximum penalty allowed by the Consent Decrees. As stated in the EPA/EPD status report to the federal court, "Since the last status report, EPA and EPD have worked closely with the City to improve its procedures and correct reporting violations. EPA and EPD have observed process and procedural improvements in the City's implementation of the Consent Decrees over the last 6 months."
- Sanitary Sewer Overflows (SSO's) – The City is subject to a maximum penalty of \$1500 for each SSO to creeks, and as of 3/1/01 for each SSO to dry land. For 3<sup>rd</sup> and 4<sup>th</sup> Quarters of 2001, EPA/EPD assessed penalties averaging less than \$600 per SSO, reflective of the following improvements:
  - ✓ SSOs in 2<sup>nd</sup> and 3<sup>rd</sup> Quarter 2001 averaged about 190 per quarter; with 173 SSOs in 4<sup>th</sup> Quarter 2001 (minor reduction).
  - ✓ In each Quarter of 2001, the total volume of SSOs were reduced, from 240,000 gallons in 1<sup>st</sup> Quarter to 100,000 gallons in 4<sup>th</sup> Quarter.
- Reporting of SSO's – The City is subject to \$2,000 penalty for each reporting violation (24-hr telephone, 24-hour and 5-day certified mail, and quarterly report). Reporting violations in 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Quarter of 2001 averaged about 47 violations and \$94,000 of penalties per quarter. On 10/1/01 the City supplemented its spill response and reporting staff to achieve 24-hour per day, 7-day per week staffing. In 4<sup>th</sup> Quarter 2001, the City had 11 reporting violations (2% defects) and \$20,000 of penalties, a significant reduction. The goal for 2002 is zero reporting errors. As of 4<sup>th</sup> Quarter 2001, the PMT assumed full SSO reporting duties, and is responsible for the \$20,000 4<sup>th</sup> Quarter penalty.

# MEMORANDUM

- Reporting of Combined Sewer Overflows (CSOs) – The City is subject to \$2,000 penalty for each reporting violation (Quarterly reports). The City experienced 12 reporting errors in all of year 2001, for a total penalty of \$24,000. The PMT is responsible for CSO quarterly reporting, and is responsible for the \$24,000 Year 2001 penalty. The PMT has implemented a QC process that should prevent additional CSO reporting errors.
- Unreported Pump Stations – the City did not include 2 small pump stations in the original Pump Station MOMS Plan submitted to EPA/EPD. One station serves a single residence, and the other station serves about a dozen residences. This was corrected in a 10/15/01 revised submittal, assessed a penalty of \$45,300, and is not subject to additional penalties.
- Errors in Macro System Report (Hydraulic Modeling) – The PMT omitted 10 trunk sewers in the Macro System Evaluation Report submitted to EPA/EPD on 8/1/01. This was corrected in a 1/24/02 letter and 2/20/02 memo, assessed a penalty of \$42,500, and is not subject to additional penalties. The PMT is responsible for the Macro system report, and is responsible for the \$42,500 penalty.
- Failure to Feed Sodium Hypochlorite During CSO Events – The City failed to feed sodium hypochlorite during 15 CSO events from 11/15/00 to 12/31/01. EPA/EPD assessed a penalty of \$2,000 per event for a total of \$30,000. These events occurred during nights and weekends, when the CSO facilities were not staffed. The City is currently staffing the CSO facilities during all wet weather events, thus additional failures are not anticipated.

ATLANTA WASTEWATER SYSTEM IMPROVEMENT PROGRAM									
PROGRAM MANAGEMENT TEAM									
Calculation of Stipulated Penalties -- EPA/EPD Demand Letter of 3/25/02									

**ATLANTA WASTEWATER SYSTEM IMPROVEMENT PROGRAM  
PROGRAM MANAGEMENT TEAM**

## Calculation of Stipulated Penalties -- EPA/EPD Demand Letter of 3/25/02

### Deficiencies in Quarterly Reporting of Combined Sewer Overflows (CSOs)

					FACD
			EPA/EPD	Calculated	Maximum
		Reporting	Stipulated	Penalty	Penalty
	Time Period	Violations	Penalty	Per Violation	Per Violation
	1st thru 4th Q 2001	12	\$ 24,000	\$ 2,000	\$2000/Day

### Unreported Pump Stations

						FACD
				EPA/EPD Stipulated Penalty	Calculated Penalty	Maximum Penalty
	Reporting Violations				Per Violation	Per Violation
Time Period						
9/15/00 to 10/15/01	2	\$	45,300	\$	22,650	\$2000/Day

## Failure to Feed Sodium Hypochlorite During CSO Event

						<b>FACD</b>
				<b>EPA/EPD</b>	<b>Calculated</b>	<b>Maximum</b>
			<b>Reporting</b>	<b>Stipulated</b>	<b>Penalty</b>	<b>Penalty</b>
	<b>Time Period</b>		<b>Violations</b>	<b>Penalty</b>	<b>Per Violation</b>	<b>Per Violation</b>
	<b>9/15/00 to 12/31/01</b>		<b>15</b>	<b>\$ 30,000</b>	<b>\$ 2,000</b>	<b>\$2000/Day</b>

## Errors in Macro System Report (Hydraulic Modeling)

						FACD
				EPA/EPD	Calculated	Maximum
				Stipulated	Penalty	Penalty
Time Period		Reporting		Penalty	Per Violation	Per Violation
		Violations				
8/1/01 to 1/24/02		10		\$ 42,500	\$ 4,250	\$2000/Day

**Total Stipulated Penalties**

[illegible]



